

REMARKS

Claims 1-12 are pending. By way of the present amendment, claims 1, 6 and 12 have been amended, no claims are cancelled, and new claims 13-17 have been added. Support for the present amendments and the new claims can be found in the application as originally filed, and no new matter is believed to be introduced.

Claim Rejections under 35 U.S.C. § 112

In the Office Action mailed March 24, 2009, claims 1-12 were rejected under 35 USC 112, second paragraph. The Office Action specifically identified the phrase “a parameter associated with the concentration” in independent claim 1 and the phrase “suspended solids” in claim 12. In response, Applicant has amended independent claim 1 to specifically recite that “the specific gravity of the water contaminated with solids” is determined. Applicant has also amended claim 12 to recite that the “concentration of suspended solids in the contaminated water is determined.” As these amendments particularly point out and distinctly claim the subject matter of the presently claimed invention, Applicant respectfully requests withdrawal of the foregoing rejection.

Claim Rejections under 35 USC 102(e)

In the Office Action mailed March 24, 2009, claims 1-4, 11 and 12 were rejected under 35 USC 102(e) as being anticipated by U.S. Patent No. 6,758,590 to Black. Applicant has amended independent claim 1 to further clarify the presently claimed invention. Applicant respectfully requests withdrawal of the rejection, as a *prima facie* case of anticipation has not been established.

The process described by Black and the claimed invention are intrinsically very different to one another. The process described by Black involves capturing a concrete slurry washed out of concrete trucks, removing the coarse solids, and then returning the resulting slurry to a concrete truck for use. Although Black states that some dilution of the concrete slurry may take place, the sole purpose of this dilution appears to be to ensure that the slurry can be processed in a belt filter press. Thus, the purpose of diluting the slurry in Black is not to make the slurry suitable for use within a manufacturing process, but to prevent clogging of a belt filter press. This process is clearly a very different process to that of the claimed invention in which diluted water formed in the storage tank through the addition of water to contaminated water is recycled for use in the manufacturing or construction process.

Further, claim 1 as amended recites that the addition of water to the storage tank dilutes the contaminated water to form a diluted water which is then used in the manufacturing or construction process. By way of this amendment, it is clear that the entirety of the water contained within the storage tank is the diluted water and is therefore suitable for use in a manufacturing or construction process. In stark contrast, the water returned to the process in Black is simply clarified water formed at the top of the slurry vessel by settling of solids in the slurry. The remaining water in the slurry vessel is not diluted but is, in fact, concentrated due to the removal of clarified water from the top of the vessel. Thus, Black does not teach, disclose or suggest the limitation of independent claim 1, namely, that the water added to the storage tank forms a diluted water, the diluted water being used in the manufacturing or construction process.

A person of ordinary skill in the art would immediately understand the two processes are intrinsically different from one another.

In addition, Applicant respectfully notes that the density (or specific gravity) of the slurry in Black is measured as it enters the slurry vessel, not while it is in the slurry vessel as claimed in independent claim 1. Measuring the specific gravity of the contaminated water in the storage tank is particularly important in the present invention in order that the dilution of the contaminated water is carefully monitored and controlled to a predetermined level. By contrast, it is clear that no control or monitoring of the specific gravity in the slurry vessel of Black is performed due to the fact that the solids in the slurry are allowed to settle to create a region of clarified water that may then be drawn off the top of the slurry vessel. It will be immediately understood by a person of ordinary skill in the art that it is not possible to accurately monitor or control the specific gravity of a slurry in a tank when no agitation of the slurry occurs and the solid particles are allowed to settle out of the suspension.

In summary, Applicant respectfully submits that Black fails to teach all features of independent claim 1 as amended, from which claims 2-14 depend, in that there is no disclosure of the addition of water to a storage tank forming a diluted water, the diluted water being used in a manufacturing or construction process. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP 2131 quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Accordingly, a *prima facie* case of anticipation has not been established. With respect to specific features of claims 2-12 depending from claim 1, these are not commented on further, as

they are presently moot given the above analysis, although Applicant does not acquiesce in the Examiner's position. Applicant respectfully requests withdrawal of the foregoing rejection.

Notwithstanding the foregoing, Applicant respectfully notes that the Office Action mailed March 24, 2009 failed to address dependent claim 6. New independent claim 15 contains the limitations of claim 6. Applicant respectfully submits that independent claim 15 is patentable over Black due to the fact that Black fails to teach, disclose, or even suggest, sequentially filling a plurality of storage tanks, let alone a situation in which the plurality of storage tanks incorporate a sensor for determining the specific gravity of the water contaminated with solids wherein upon the specific gravity reaching a predetermined level the tank is by-passed and the next storage tank in the sequence is filled.

As previously mentioned, Black discloses measuring the specific gravity of the slurry entering the slurry vessel. There is no monitoring or control of the specific gravity once the slurry has entered the vessel. This is clearly indicated by the fact that the solid particles in the slurry are allowed to settle to form clarified water at the surface of the vessel. A person of ordinary skill in the art would immediately understand that this would make it difficult, if not impossible, to obtain an accurate specific gravity measurement from within the slurry vessel of Black. As there is no measurement of the specific gravity within the single slurry vessel of Black, there can be no disclosure or suggestion of by-passing a particular tank in a sequence when the specific gravity reaches a predetermined level.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

Application No. 10/537,964

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Stender', with a long horizontal flourish extending to the right.

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